



# *COMMONWEALTH of VIRGINIA*

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
CITY OF HOPEWELL  
FOR THE  
CITY OF HOPEWELL SANITARY SEWER SYSTEM AND  
HOPEWELL REGIONAL WASTEWATER TREATMENT FACILITY  
VPDES Permit No. VA0066630**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Hopewell, regarding the City of Hopewell Sanitary Sewer System and the Hopewell Regional Wastewater Treatment Facility, for the purpose of resolving certain violations of the State Water Control Law, the Virginia Pollutant Discharge Elimination System Permit Regulation and the above-referenced Permit.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "City" means the City of Hopewell, a political subdivision of the Commonwealth of Virginia. The City of Hopewell is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "DMR" means Discharge Monitoring Report.
6. "Facility" or "Plant" means the Hopewell Regional Wastewater Treatment Facility, located in Hopewell, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City of Hopewell.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Permit" means VPDES Permit No. VA0066630, which was issued under the State Water Control Law and the Regulation to the City of Hopewell on September 30, 2008 and which expires on September 29, 2013.
9. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
10. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "SSO" means sanitary sewer overflow.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "System" means the City of Hopewell sanitary sewer system, which collects and transports domestic wastewater to the First Street Pump Station and Bailey's Creek Pump Station and then to the Hopewell Primary Treatment Facility.
17. "Upset" is defined by 9 VAC 25-31-880 of the Regulation, and means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. The City owns and operates the Facility in Hopewell, Virginia. The Permit allows the City to discharge treated sewage and other municipal wastes from the Facility to Gravelly Run, in strict compliance with the terms and conditions of the Permit.
2. In November 2006, staff from the Facility assumed responsibility for the care and maintenance of the System, which collects and transports domestic wastewater to either the First Street Pump Station or Bailey's Creek Pump Station, and on to the Primary Plant, which provides disinfection of the domestic wastewater. After disinfection, the wastewater is pumped to Bear Creek Pump Station, where wastewater from a local industrial facility is added. From the Bear Creek Pump Station, the wastewater is pumped to the Hopewell Regional Wastewater Treatment Facility. The System includes approximately 130 miles of sewer lines.
3. Due to pipe breaks, electrical outages, storm events, and infiltration and inflow in the System, untreated sewage has been and is being occasionally discharged from various locations in the System into unnamed tributaries to Bailey's Creek, Cattail Creek the Appomattox River and the James River, as well as the main stems of Bailey's Creek, Cattail Creek, and Cabin Creek. These waters are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.

4. Since 1999, there have been 161 documented occurrences of System overflows. Overflows from the First Street Pump Station account for 34% of the System overflows, and overflows from the Primary Facility and Primary Facility Pump Station account for 25% of the System overflows. Overflows from the Bailey's Creek and Bear Creek Pump Stations make up 3% and 2.5% of the System overflows, respectively.
5. The December 2008 and January 2009 DMRs that were submitted by Facility staff indicated that the Facility exceeded the following discharge limitations contained in Part I.A.1 of the Permit. The Facility's operating logs indicate that it discharged treated wastewater from the Plant every day from December 1, 2008 through January 31, 2009.

Month & Year	Outfall	Parameter	Observed	Permit Limit
January 2009	001	CBOD <sub>5</sub> (avg. loading)	6,085 kg/day	4,400 kg/day
January 2009	001	CBOD <sub>5</sub> (max. loading)	10,403 kg/day	6,300 kg/day
January 2009	001	CBOD <sub>5</sub> (avg. conc.)	61 mg/L	37 mg/L
January 2009	001	CBOD <sub>5</sub> (max. conc.)	106 mg/L	53 mg/L
January 2009	001	Ammonia (as nitrogen) (avg. conc.)	20.6 mg/L	18.9 mg/L
December 2008	001	Ammonia (as nitrogen) (avg. conc.)	19.5 mg/L	18.9 mg/L

6. Facility staff indicated that the December 2008 ammonia exceedences were due to higher than normal loadings of total Kjeldahl nitrogen, and the January 2009 and all CBOD<sub>5</sub> exceedences were due to a Plant Upset that began on January 5, 2009. The unit processes remained in service and the biomass was reseeded. The Facility reported the Upset as required by 9 VAC 25-31-880.C, and has since returned to compliance.
7. On March 26, 2009, DEQ issued a Warning Letter to the Facility, citing various System overflows that occurred at the Primary Plant Pump Station and the First Street Pump Station during August, September, and December of 2008 and the above listed violations of the Permit's effluent limitations that occurred during December 2008 and January 2009.
8. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

11. The Department has issued no permits or certificates to the City other than VPDES Permit No. VA0066630, which authorizes only the discharge of treated sewage from the Facility into Gravelly Run. Gravelly Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
12. In 2007, the City performed a Comprehensive Pilot Study for an Infiltration/Inflow Reduction Program within the System. The City plans to upgrade its 1<sup>st</sup> Street, Bailey's Creek, and Bear Creek pump stations and shut down its Primary Facility and Primary Facility Pump Station in order to eliminate unauthorized discharges from the System.
13. On May 5, 2009, DEQ staff met with representatives of the City and discussed the System overflows and ongoing and future corrective actions for System overflows. Corrective action is not required for the permit effluent violations because the causes were isolated events and the Facility has returned to compliance.
14. Based on DMRs and documents submitted by the City, the results of DEQ's investigation, and the May 5, 2009 meeting, the Board concludes that the City has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage from the System into State waters and, except for those exceedences associated with the Plant Upset, by failing to comply with Permit conditions while discharging from the Facility into State waters.
15. In order for the City to return to compliance, DEQ staff and representatives of the City have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City of Hopewell, and the City of Hopewell agrees to:

1. Perform the actions described in Appendix A of this Order and
2. Pay a civil charge of \$15,645 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The City shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the City, for good cause shown by the City, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the City admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. The City consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The City declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The City shall show that such circumstances

were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the City intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

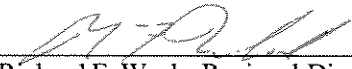
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City. Nevertheless, the City agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The City petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the City and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the City certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the City of Hopewell voluntarily agrees to the issuance of this Order.

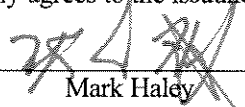
And it is so ORDERED this 30<sup>th</sup> day of October, 2009.

  
Richard F. Weeks Regional Director  
Department of Environmental Quality

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The City of Hopewell voluntarily agrees to the issuance of this Order.

Date: 8/21/09 By: , \_\_\_\_\_  
Mark Haley, Director  
City of Hopewell Regional Wastewater Treatment Facility

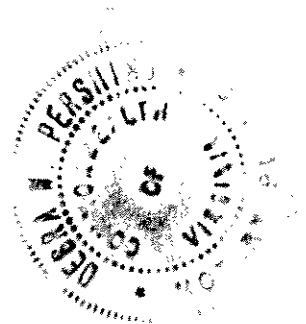
Commonwealth of Virginia  
City of Hopewell

The foregoing document was signed and acknowledged before me this 21<sup>st</sup> day of  
August, 2009, by Mark Haley, who is the Director of the City of Hopewell Regional  
Wastewater Treatment Facility, on behalf of the City.

  
Notary Public  
#203979  
Registration No.

My commission expires: 12/31/2011

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. The City shall develop and submit plans, specifications, and implementation schedules for each pump station upgrade to DEQ as follows:

Submittal Due

- a. First Street Pump Station upgrade..... **September 30, 2010**
- b. Bailey Creek Pump Station upgrade..... **December 31, 2010**
- c. Bear Creek Pump Station upgrade..... **July 31, 2011**

Once approved by DEQ, the plans, specifications, and schedules shall become enforceable as part of this Order and shall be implemented. Changes to plans or specifications must be approved by DEQ prior to implementation.

2. No later than **December 31, 2010**, the City shall develop and begin implementation of a Capacity, Management, Operation and Maintenance Program.
3. Unless otherwise specified in this Order, the City shall submit all requirements of Appendix A of this Order to:

Allison Dunaway  
Enforcement Manager  
DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060